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National Association of Federally-Insured Credit Unions

August 1, 2017

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

RE: Regulation CC – Availability of Funds and Collection of Checks
Docket No. R-1564

Dear Ms. Misback:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in response to the Board's proposed presumption of alteration under Regulation CC (the proposal). In general, NAFCU supports adoption of the presumption of alteration with the expectation that it will provide certainty and predictability in the check collection process.

Today check collection is predominantly electronic, and NAFCU understands that the instances where an original paper check is available for inspection in the event of a dispute are rare. Adoption of an evidentiary presumption of alteration in Regulation CC could be beneficial where there is disagreement as to whether the dollar amount or the payee on a substitute check or electronic check has been altered or forged, and the original paper check is unavailable for inspection. NAFCU anticipates that a regulatory presumption will help resolve conflicting court opinions which address whether a fraudulent substitute or electronic check should be treated as altered or forged when the original check cannot be presented as evidence.

NAFCU is not aware of circumstances that would aid in determining whether the presumption should apply to a claim that a check's date has been altered. Accordingly, we encourage the the Board to investigate whether including such claims within the scope of the presumption would promote greater certainty in the check collection process.

In evaluating possible exceptions to the presumption, NAFCU understands that it is relatively uncommon for a paying credit union to receive and destroy an original check presented for payment. However, to preserve the general intent of the proposal, NAFCU believes that the presumption should not apply where the paying credit union has received the original paper check and the original has been lost or destroyed at the time of the dispute. NAFCU believes that given the industry's preference for electronic collection of checks, the paying credit union's

receipt of an original check may coincide with special circumstances that warrant closer attention to detail. In such cases, the presumption should not apply.

NAFCU recommends that the Board clarify that the presumption of alteration will apply in situations where there is inadequate evidence to determine whether the check image itself has been altered. The proposal may be read to suggest that only alterations of the original check will trigger the presumption. However, NAFCU believes that it is not implausible that remote deposit capture software might be abused to produce an altered check image. Although such electronic alterations may represent only a hypothetical possibility, NAFCU believes that the presumption would provide a predictable result when neither party can provide evidence that a check image was itself fraudulently manipulated.

As a matter of final consideration, NAFCU asks that the Board commit to a full assessment of the rule, should it become final, to determine whether the presumption favors certain types of depository institutions in disputes involving the presentment of fraudulent substitute or electronic checks, or disproportionately shifts check retention burdens onto smaller institutions. NAFCU acknowledges that in the absence of data, it may be difficult for commenters to predict with certainty whether the presumption will support an equitable loss allocation framework. Moreover, the proposed rule acknowledges that depository banks or collecting banks which destroy all original checks after truncation "may incur additional risk" as a result of the proposed rule. While the Board indicates that depository banks and collecting banks must each weigh the costs of expanded check retention to offset the costs of the presumption, NAFCU believes that any widespread shift of check retention burdens to smaller, community-based financial institutions (e.g., credit unions) would be unfair. Accordingly, NAFCU asks that the Board adopt provisions designed to assess and correct any such inequities that might result from the presumption of alteration.

NAFCU appreciates the chance to submit comments regarding the Board's proposed presumption of alteration. Should you have any questions or concerns, please do not hesitate to contact me at amorris@nafcuh.org or (703) 842-2266.

Sincerely,

A handwritten signature in black ink that reads "Andrew Morris". The signature is written in a cursive, flowing style.

Andrew Morris
Regulatory Affairs Counsel